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November 12, 1996

Re: FCC Docket No. 96-115
Ex Parte Comments

FCC MAIL ROOM

Bill Canton
Secretary of the Commission
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Mr. Canton:

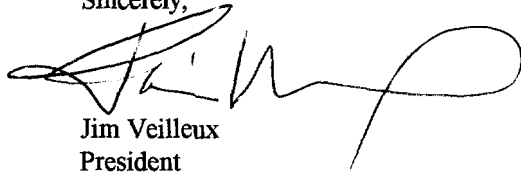
Enclosed are Ex Parte Comments on CC Docket Number 96-115, "Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information."

We are sending these comments based on a brief discussion with Bill Kehoe, who suggested that the comments may be useful and welcome in the matter.

Copies are being sent to all relevant parties in the record.

Thank you for your help in this matter.

Sincerely,



Jim Veilleux
President

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Before the
Federal Communications Commission
Washington, DC 20554

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FCC MAIL ROOM

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	Ex Parte Presentation
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other)	
Customer Information)	

Comments of

James Veilleux
VoiceLog LLC
9509 Hanover South Trail
Charlotte, NC 28210

VoiceLog LLC submits these comments on October 30, 1996 regarding Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information, CC Docket 96-115.

Summary

These comments complete the comments begun by VoiceLog LLC regarding the newly added Section 222(c)(1) of the Communications Act of 1934, offering a means of documenting customer approvals of CPNI usage by carriers. The method involves allowing carriers to notify and obtain customer approvals orally and to require oral notifications and approvals to be documented in a recording through an independent third party recording service bureau. This method is proposed in addition to any other methods - such as written notification and approval - that the Commission may find acceptable.

The method we offer is designed to address virtually all of the concerns raised by commenters regarding how customer approvals should be obtained and documented. We have reviewed all the comments and have attempted to identify each individual argument raised by the commenters. While we do not expect all the commenters to agree with us, we believe our proposal is more than a compromise position - rather it is a superior method for meeting all of these concerns.

While there are many reasons outlined below for the third party recording system's superiority, three stand out. First, an orally-based system allows the full participation of 40-44 million functionally illiterate adults and 6-14 million non-English speakers. Second, the third party recording system provides tangible, unambiguous evidence as specific and verifiable as a written signature with significant advantages in accessibility for enforcement review and dispute resolution. Third, the third party recording system is the most effective and efficient means offered for carriers to document the actual wishes of customers.

More specifically, an oral process verified through an independent third party addresses the following concerns raised by commenters:

CPNI Usage Approvals - Ex Parte Comments of VoiceLog LLC

- 1) Written approval provides needed monitoring.
 - The third party recording system allows for easy monitoring of the approval process; a written process is actually more difficult to monitor.
- 2) Written approval provides needed evidence.
 - The third party recording system provides a tangible, verbatim record of the transaction with more information than written approval.
- 3) Written approval prevents abuse of the process.
 - The third party recording system prevents abuse as well as any written process.
- 4) Written approval protects consumers' privacy rights.
 - The third party recording system is just as effective in protecting consumer rights and is more effective in giving all consumers an opportunity to state their preferences.
- 5) Written notification maximizes customer understanding.
 - The third party recording system results in better customer understanding than a written system.
- 6) Written approval will reduce/eliminate uncertainty/ambiguity.
 - The third party recording system can be as certain and unambiguous as a written system
- 7) Written approval will reduce disputes with customers.
 - The third party recording system will provide for faster, more economical and easier resolution of customer disputes.
- 8) Written approval results in consistency in industry practice.
 - The third party recording system can provide equal levels of consistency
- 9) Written notification creates consistency in customer understanding.
 - The third party recording system is just as effective in consistent customer understanding and is better at creating overall understanding.
- 10) Written approval will properly limit authorization.
 - The third party recording system has significant advantages in this area, and there is little reason to believe a written process will do better.
- 11) Written approval will reduce telemarketing calls.
 - This argument is based on speculation, but there are good reasons to believe the third party recording system will result in fewer telemarketing calls.
- 12) Written notification prevents difficulty of understanding in phone situation.
 - Written notification provides no understanding for large numbers of customers; only the third party recording system can provide basic understanding for all customers.
- 13) Written approval creates competitive parity.
 - The third party recording system prevents ILECs from gaining unfair advantage by assuming approval of captive customers, and provides a reasonable system equally available to all carriers.
- 14) Written approval ensures the right person in household approves.
 - There is no reason to believe that written approval process is superior in this respect and at least some reasons to believe the third party recording system may work better.
- 15) Written approval avoids competitive abuse.
 - The public accessibility of recorded conversations in the third party recording system will inhibit carrier abuse.
- 16) Written approval creates an unreasonable administrative burden.
 - The third party recording system is cost-effective, easy to administer, and may be the least expensive of any system requiring documented affirmative customer approval.
- 17) Written approval prevents carriers from using CPNI.
 - The third party recording system will provide access to CPNI for the majority of customers and the vast majority of customers who would provide their approval.
- 18) Written approval undermines one-stop shopping.
 - The third party recording system facilitates one-stop shopping.
- 19) Written approval means carriers cannot meet consumer expectation of carrier knowledge.

CPNI Usage Approvals - Ex Parte Comments of VoiceLog LLC

- The third party recording system allows carriers to respond quickly to customer's information needs.

In addition to meeting the concerns of commenters, it is clear that the system proposed is workable, efficient and effective as a means of documenting customer approvals for CPNI usage. Several carriers, including carriers who clearly prefer the "assumed consent" approach of the ILECs and AT&T, and other carriers with large customer bases, such as MCI, noted the workability of an oral system. Many commenters whose first choice was for a written process voiced support for a third party verification system if the Commission were to allow an oral process. And several carriers voiced support for recordings as a means of verifying the oral process.

The third party recording system, then, captures the essential elements of third party verification, offers a verbatim record of the transaction, is more effective at identifying and capturing the wishes of the vast majority of customers than other methods and is sufficiently cost-effective to allow carriers to implement without undue burden. In short, the third party recorded verification process is the superior system for meeting the concerns of the competing interests in this proceeding.

CPNI Usage Approvals - Ex Parte Comments of VoiceLog LLC

Introduction

These comments are intended to complete the discussion begun in our earlier letter regarding CPNI usage approvals under Section 222 (c)(1) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (see letter attached).

In our earlier letter we proposed that the Commission permit oral rights notifications and approvals for CPNI usage on the grounds that an oral process would allow all customers - including illiterate adults, numbering some 40 - 44 million, non-English speakers, numbering 6 - 14 million, and those disinclined to read - to voice their approval or disapproval regarding CPNI usage.

At the time we wrote the first letter we did not have access to the comments of the parties who contributed to the docket. Having obtained those comments, we offer our thoughts on how an oral approval system, verified through a third party recording system, addresses most, if not all of the concerns of the commenters.

Viability and Support of An Oral Third Party Recorded Approach

We first note that many commenters supported an oral system, if not for all carriers, then at least for that commenter's use:

- "...carriers should have the option to obtain notification orally and simultaneously with the carrier's effort to seek approval for CPNI use..."¹
- "...the Commission should permit such use of CPNI upon oral approval by the customer."²
- "Carriers should be allowed to obtain oral approval to use CPNI."³
- "Customers should be able to authorize unlimited access to CPNI by a carrier's sales personnel either orally or in writing."⁴
- "A simple phone call from an end user should be all that is required to authorize the release of CPNI..."⁵

Second, we note that many commenting carriers - including ILECs - supported an oral system as workable.

- "Carriers could sufficiently manage such [outbound telemarketing campaigns] so that the implementation of oral notification of customer's CPNI rights, and appropriate notation of customer records, could be easily ensured."⁶
- "Carriers are quite capable of orchestrating an oral approval process, should they deem its adoption appropriate."⁷
- "...[O]ral notification given simultaneously with a carrier's attempt to seek approval would be the least burdensome, legally acceptable method [of seeking CPNI approval]."⁸

Third, there were those who believed that rights notification could or should also be oral⁹:

¹ Teleport Communications Group, Comments, p.6

² Intelcom Group, Comments, p.6

³ Pacific Telesis Group, Reply comments, p.7

⁴ Bell Atlantic, Comments, p.2

⁵ America's Carriers' Telecommunications Association, Comments, p.4

⁶ SBC Communications, Comments, p.12

⁷ US West, Reply comments, p.9

⁸ SBC Communications, Comments, p.10

⁹ Ameritech, Comments, p.8

CPNI Usage Approvals - Ex Parte Comments of VoiceLog LLC

- “[O]ral notification about their rights to restrict use of CPNI should be given.”¹⁰
- “In fact, it would be preferable for the notification to be provided as close in time as possible to the customer’s approval in order to ensure that the approval is granted with a complete understanding of the use of CPNI that the customer is approving”.¹¹

Fourth, there was support for a recording system as a means of verifying CPNI usage approvals:

- “Carriers should be able to document oral consent...by recording the conversation in which authorization is granted.”¹²
- “MCI would support any reasonable verification method to ensure compliance with an oral notification and approval requirement.”¹³

Finally, there were many commenters who believed that the CPNI usage approval situation was analogous to that of PIC changes with its “slamming” problems¹⁴ and that allowing oral approval should be contingent on some form of independent verification, similar to third party verification used in PIC changes today¹⁵.

- “If the FCC determines that oral authorization is permissible, the CPUC recommends that some requirements and/or restrictions on the process are appropriate. These restrictions could be modeled after both the FCC’s and CPUC’s “slamming” rules...”¹⁶
- “[If oral CPNI approval is allowed,] third party verification should be employed...”¹⁷

We believe the recorded third party verification system we suggested in our previous letter meets virtually all objections to oral approval while still providing an efficient, effective and inexpensive method for carriers to document CPNI usage approvals. Specifically, the third party recording system provides for specific, unambiguous and verifiably documented approvals, effectively impervious from tampering or manipulation, while giving carriers the ability to gather approvals at little cost in time or direct expense.

An Oral Third Party Recorded System Addresses Objections/Concerns Regarding Other Methods

The material below reviews every objection to oral approvals which we could find in the record. We have provided representative quotations to capture the spirit of the objection. We then offer some observations about the objection and the ability of the third party recording system to resolve the issue.

In addition to dealing with the objections to oral approvals, beginning with page 14, we show how oral approvals verified by third party recordings resolve many of the concerns expressed by carriers about a written approval process.

We hope you find these comments helpful in resolving the issues raised by the parties.

¹⁰ Computer Professionals for Social Responsibility, Comments, p.8

¹¹ MCI, Comments, p.11

¹² Bell Atlantic, Comments, p.9

¹³ MCI, Comments, p.11

¹⁴ Cable & Wireless, Comments, p.7; Excel, Comments, p.4; Computer Professionals for Social Responsibility, Comments, p.12; Competitive Telecommunications Association, Reply Comments, p.7

¹⁵ Information Technology Association of America, Reply Comments, p.13; Frontier Corporation, Comments, p.8-9

¹⁶ California Public Utility Commission, Comments, p.11

¹⁷ Cable & Wireless, Comments, p.8

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Issues Raised Regarding CPNI Usage Approvals

1) Written approval provides needed monitoring

- Illustrative quotes

“...[Written authorization] makes monitoring of CPNI use much more manageable and reliable...”¹⁸

“It would be virtually impossible to police such activity [outbound telemarketing to get oral approval]”¹⁹

“It would be very difficult to audit or maintain oversight of CPNI uses if oral consent were the rule.”²⁰

- Discussion

The underlying assumption in these comments is that written authorization provides an easily obtainable record when oral does not. In fact, the recorded third party verification process we propose offers both a record and a greater degree of access than written authorization.

- Effect of recorded third party verification

In a third party recording system, as proposed here, monitoring and auditing are actually easier than they would be in a written authorization process.

The most likely written process to be adopted would have the carrier store signed authorizations in its files. Enforcement agency monitoring of such a system requires that the agency obtain copies of signed authorizations and compare them to the carrier’s files. In the alternative, individual customer complaints would require the carrier to produce copies of signed authorizations, and the customer to provide a copy of his/her signature, processes that require moving physical media, with subsequent delays and expense.

In contrast, the third party recording system envisioned here allows regulators to monitor each recording individually and instantly. All that is required to allow customers, regulators and others to review recorded CPNI approvals is the system access number, security code and the transaction number of each conversation. Recorded approvals can be reviewed instantly by telephone, without the need to mail, fax or deliver paper copies. Customer voices can more easily and quickly be compared to recorded voices (this can happen in a conference call) than customer signatures can be compared to filed signatures (which requires that both are mailed to the comparer’s location.)

2) Written approval provides needed evidence

- Illustrative quotes

“...[T]he evidentiary benefits resulting from mandatory written authorization outweigh the minimal burden...”²¹

“...difficulty in verification [in oral CPNI authorization]...”²²

“...[O]ral verification is more difficult to verify...”²³

¹⁸ Consumer Federation of America, Comments, p.5

¹⁹ Consumer Federation of America, Comments, p.7

²⁰ Computer Professionals for Social Responsibility, Comments, p.12

²¹ CompuServe, Comments, p.

²² Washington Utilities and Transportation Division, Comments, p.8

“...[Written authorization] provides the carrier with evidence that it has obtained customer approval...”²⁴
“...[Written authorization] is more verifiable...”²⁵
“In the absence of written notification and authorization, there is no way for the Commission or a competitor to know whether a carrier has effectively notified customers of their rights and obtained proper consent”²⁶
“...[I]t would be impossible in practice to confirm that a carrier has carried out its obligations...”²⁷
“...[O]ral notification and authorization are inherently vague and certainly not auditable.”²⁸
“[Written approval] will also provide a clear and reliable paper trail.”²⁹
“...[A]n explicit, verifiable demonstration of the consumer’s desire takes precedence.”³⁰
“...written notification which can be produced for evidentiary purposes...”³¹
“...[W]ritten notification and authorization are the most straightforward and reliable methods available...”³²

- Discussion

The key here is that there be verifiable evidence of the transaction. Implicit in the comments is the contention that the evidence must include verifiable proof of the customer’s participation. These comments assume that notations in a carrier’s files and similar forms of evidence are insufficient, presumably because they can be fabricated, altered or in some other way are untrustworthy.

- Effect of recorded third party verification

Recordings, of course, provide a verbatim record of the transaction between the customer and the carrier, and actually provide more information about the transaction than a signed authorization form. For example, the signed authorization form does not show whether the customer understands what he/she is agreeing to, while tone of voice, hesitation and other verbal cues can help to indicate customer understanding.

Because there is an implicit suggestion by many parties that a carrier or carrier representative might fabricate evidence of customer approval, it is helpful to note that a third party service bureau approach to recording makes tampering with recordings extremely difficult and provides the “chain of custody” which is an element in the admissibility of recordings as evidence.

3) Written approval prevents abuse of the process

- Illustrative comments

“...[Written authorization] protects against anti-competitive abuses...”³³

²³ Competitive Telecommunications Association, Comments, p.7

²⁴ National Association of Regulatory Utility Commissioners, Comments, p.3

²⁵ National Association of Regulatory Utility Commissioners, Comments, p.3

²⁶ Information Technology Association of America, Comments, p.6

²⁷ Information Technology Association of America, Comments, p.6

²⁸ Information Technology Association of America, Comments, p.6

²⁹ Frontier Corporation, Comments, p.7

³⁰ Competitive Policy Institute, Reply Comments, p.3

³¹ Excel, Comments, p.4

³² Information Technology Association of America, Reply Comments, p.12

³³ Consumer Federation of America, Comments, p.5

“...potential for abuse [in oral CPNI authorization]...”³⁴

“Oral notification and authorization are subject to abuse.”³⁵

“A written approval requirement is more likely to prevent abuse...”³⁶

- Discussion

With the expected flood of new entrants in the marketplace it is undeniable that some forms of abuse will occur. Even if existing carriers, such as the BOCs and AT&T behave responsibly - and there are examples in the record that shed at least some doubt on that³⁷ - one can easily anticipate less responsible carriers abusing customer information for quick gain.

- Effect of recorded third party verification

Oral notification and authorization with recorded third party verification is at least as effective in preventing abuse as written notification and authorization, as demonstrated above. Both oral and written forms depend on the Commission's willingness to specify in detail the procedures, text, etc. used by the carrier, as well as the Commission's willingness and ability to vigorously enforce its rules. Our only point is that a scripted oral process with recorded third party verification is just as effective as a written process.

It is also useful to note that written authorization is no guarantee of compliance. Excel, a carrier with a record of alleged slamming problems notes that it requires signed Letters of Authorization for all of its PIC changes³⁸, a practice which evidently has not prevented accusations of extensive slamming.

4) Written approval protects consumers' privacy rights

- Illustrative comments

“...[written authorization] maximizes protection for the captive customer...”³⁹
[the FCC should require written authorization] “...in order to create the highest level of privacy rights.”⁴⁰

- Discussion

These comments focus on the consumer's privacy rights, especially in the context of ILEC customers, who, it is asserted, have no choice in the selection of carrier and have not voluntarily entered into a customer relationship.⁴¹

- Effect of recorded third party verification

It seems to us that the primary issue here is ensuring that:

- (1) the statute is satisfied and ,
- (2) the customer's wishes are followed, regardless of their position on CPNI usage.

³⁴ Washington Utilities and Transportation Division, Comments, p.8

³⁵ Information Technology Association of America, Comments, p.6

³⁶ Competitive Policy Institute, Reply comments, p.9

³⁷ Washington Utilities and Transportation Division, Comments, p.6

³⁸ Excel, Comments, p.4

³⁹ Consumer Federation of America, Comments, p.5

⁴⁰ Computer Professionals for Social Responsibility, Comments, p.10

⁴¹ Intelcom Group, Comments, p.6

Clearly, the recording process documents the customer's approval, fulfilling the requirements of the Act, while maximizing the likelihood that the customer's wishes are followed in three ways:

- (1) if the customer wants CPNI used, the oral process gives him/her the ability to express that conveniently, without the extra effort of a written process,
- (2) if the customer wants CPNI used, the oral process solves literacy and, potentially, language problems, and
- (3) if the customer does not want CPNI used, the oral process gives the customer the option to refuse approval, as effectively as with a written form.

By contrast, a policy based only on written approval does not assure that customer's wishes will be followed, since it will effectively deny choice to the 44 million Americans who are illiterate, as well as those who simply choose not to read.

From a strictly quantitative view, the number of customers denied a choice in a system restricted to written approval greatly exceeds the number of customers harmed. Literate consumers at least have the choice to read or not read a notice requesting CPNI usage approval. Illiterate consumers have no choice in a written-only system. Others have clearly documented that the majority of consumers - if given a choice - would choose to allow CPNI usage⁴². Only a system that permits oral approval effectively gives them that choice.

5) Written notification maximizes customer understanding

- Illustrative quotes

"...for customer confusion [in oral CPNI authorization]..."⁴³

"...[Oral authorization] is more susceptible to misunderstanding..."⁴⁴

"There is no way of knowing whether an oral notification was properly given and understood..."⁴⁵

"...and help to provide consumers with an opportunity to understand the nature of the disclosure..."⁴⁶

"Written authorization...is the only practical method for attempting to ensure that the customer a) has been informed as to the amount and type of information that the carrier has collected about him;"⁴⁷

[Written authorization...is the only practical method for attempting to ensure that the customer]...b) has been informed of his rights regarding the carrier's use and/or dissemination of such information..."⁴⁸

[Written authorization...is the only practical method for attempting to ensure that the customer]...c) has made an informed decision to authorize the carrier to use or release such information to third parties..."⁴⁹

⁴² Bell Atlantic, Reply Comments, p.4

⁴³ Washington Utilities and Transportation Division, Comments, p.8

⁴⁴ Competitive Telecommunications Association, Comments, p.7

⁴⁵ Information Technology Association of America, Comments, p.6

⁴⁶ Competitive Policy Institute, Reply comments, p.9

⁴⁷ Texas Public Utilities Commission, Comments, p.8

⁴⁸ Texas Public Utilities Commission, Comments, p.8

⁴⁹ Texas Public Utilities Commission, Comments, p.8

- Discussion

There are several elements involved in whether the customer is likely to understand his/her rights.

- First, the explanation of the customer's rights must be specific and complete.

- Second, the explanation should be clear, that is, in plain language accessible to the customer.

- Third, the explanation should be in a format which allows the customer to attend to them. Finally, the customer should be paying attention to the explanation.

Oral explanations offer several advantages over written explanations.

- First, the nature of oral communication forces the communicator to be brief and to the point.

- Second, oral communication, especially if offered in the customer's preferred language is universally accessible, vs. written communication, which excludes 44 million adults.

- Third, oral communication, by its nature, is more likely to maintain the attention of the customer.

- Finally, only an oral process allows the customer to ask questions if he/she does not understand something, while a written process is largely a "take-it-or-leave-it" proposition as far as the customer's understanding.

Assuming that the Commission chooses to prescribe specific language for rights notification or requests for approval, there is no reason why oral notification or requests should be any less specific or complete than written notification. In fact, the Commission could require that notification include a statement to the effect that if the customer does not understand the notification or wants more information, the notification can be repeated or a written request can be mailed. Given the surveys provided by a number of commenters showing consumer support for CPNI usage by carriers, it seems likely that most customers will simply provide their approval.

If the Commission chooses not to prescribe specific language for rights notification or requests for approval, there is likewise no guarantee that even literate customers will understand the written forms. A carrier whose objective was to obscure the request or fool the customer could easily abuse a written process.⁵⁰

The Commission should require in any oral process that the carrier develop a script for notification and approval and that the script be adhered to wherever practical. This would give the carrier the flexibility they would want in developing the process while ensuring the customer's understanding.

⁵⁰ Information Technology Association of America, Comments, p.6-7; Information Technology Association of America, Reply Comments, p.12

Finally, written and oral notification are not mutually exclusive. The Commission can require that carriers publish statements of CPNI rights in telephone directories, bill statements, and so forth, to maximize understanding among all customers.

- Effect of recorded third party verification

A recording process can help to ensure that the notification provided and the request made are sufficiently clear to insure customer understanding and intent. The third party system we envision would give regulators access to records to spot check and audit transactions - if they chose - to insure the integrity of the process. It would also provide the audit trail for consumers to demonstrate that carriers offered inadequate notification or misled customers in approval requests, if that were the case. Finally, knowing that transactions would be subject to verbatim review would give carriers an incentive to provide clear, complete and fair notification which would stand up to review and challenge.

Finally, we note that the third party recording system we envision is capable of giving the rights notification and requesting approval in an automated fashion. That is, the system can be programmed to read the customer's rights and request approval. This would guarantee uniformity equal to a written process and reduce the training requirement for carrier personnel.

6) Reduce/eliminate uncertainty/ambiguity

- Illustrative quotes

"Written notice is the only reliable mechanism to ensure that carriers do, in fact, provide unambiguous notice to customers of their CPNI rights."⁵¹

"...[Written approval] may lend greater certainty and clarity to the approval process."⁵²

"...[Written authorization] is more specific..."⁵³

- Discussion

An oral process is as certain and unambiguous as a written process to the extent that the language used in the oral process is as certain and unambiguous. Specific scripting by the carrier can ensure that result. As far as the customer's comprehension, there is no more protection in a written system, in which a customer may misread a statement, than there is in a system in which the customer may mishear a statement. And, as noted above, the oral process offers many advantages over a written process.

- Effect of recorded third party verification

The recorded third party verification process helps to ensure that the exact language used both by the carrier and the customer is captured verbatim. There is no uncertainty regarding words used, tonality, inflection, pauses, etc.

7) Written approval will reduce disputes with customers

- Illustrative quotes

⁵¹ MFS Communications Company, Comments, p.11

⁵² Cable & Wireless, Comments, p.8

⁵³ National Association of Regulatory Utility Commissioners, Comments, p.3

“...[Written authorization] will also minimize the need to adjudicate future disputes between carriers and customers regarding whether CPNI had been properly or improperly utilized”⁵⁴

“Oral authorization is also flawed in that it is likely to lead to disputes with customer.”⁵⁵

- Discussion

These claims appear to be grounded in the assumption that an oral system lacks the evidence to show the customer that consent was obtained. A recording that can be played back to the customer would eliminate this concern. As part of its business practice, VoiceLog recommends to clients that they give the customer the transaction ID number of the recording as confirmation, similar to the way hotels and airlines provide confirmation numbers.

- Effect of recorded third party verification

The third party recording system envisioned here offers additional advantages in resolving customer disputes quickly. First, the system can play back the recording to the customer almost immediately (vs. mailing a copy of a signed document which would take several days). Second, most people are probably more familiar with the voices of household or business members than they are with the signatures of those people. In a multiple member household or business where several people could have signed a document, producing the signed copy may not actually resolve the customer’s dispute.

8) Written approval results in consistency in industry practice

- Illustrative quotes

“...for inconsistency in company and industry practice [in oral CPNI authorization]...”⁵⁶

- Discussion

An oral system is as capable as a written one for ensuring consistency, as long as the carrier adheres to a specific script for the notification and approval request. Consistency across the industry depends on the Commission’s willingness to prescribe specific language and can be mandated by the Commission in either an oral or written context.

Without such Commission mandates, there are no guarantees of consistency either within a carrier or across the industry, regardless of whether the system used is oral or written.

- Effect of recorded third party verification

The recording system helps ensure that carriers adhere to the prescriptions of the Commission. In addition, the automated system which can “read” the notification and “request” approval, would ensure total consistency.

9) Written notification creates consistency in customer understanding

- Illustrative quotes

⁵⁴ Frontier Corporation, Comments, p.7

⁵⁵ Excel, Comments, p.4

⁵⁶ Washington Utilities and Transportation Division, Comments, p.8

“...[E]ffectiveness of oral notice would depend upon the particular speakers addressing the customer base, which could create inconsistent results...”⁵⁷

- Discussion

There is no evidence provided for this wholly speculative result. As long as the transaction was scripted, it is hard to understand how speaker variation would affect comprehension, as long as the speakers themselves were intelligible. Of course, carriers have every incentive to hire intelligible speakers for customer service and telemarketing positions.

In addition, there is no guarantee of consistency of understanding in written communication, since literacy varies, even among the literate, and customer attention will vary depending on the context in which they read the notification and approval request.

- Effect of recorded third party verification

The recording can confirm whether the speaker is intelligible. If a carrier chose to use the automated system suggested earlier, speaker variation would not exist.

10) Written approval will properly limit authorization

- Illustrative quotes

“...whether the authorization, if limited, was correctly understood by the carrier’s representative.”⁵⁸

- Discussion

This argument assumes that a limited written authorization would be correctly understood by the carrier’s receiver of that written communication. As a practical matter, the personnel who receive such notifications would likely be data entry clerks, and it is unlikely that they would be in any better position to understand the limitations of the authorization than would a telemarketing representative.

In addition, since a customer’s specific written limitations might be in the customer’s handwriting, understanding would also be a function of the customer’s penmanship.

- Effect of recorded third party verification

The orally based, recorded verification system offers a number of advantages over a written system. In an oral system, the carrier’s representative can request help from a supervisor to get the proper interpretation of the authorization. Even after the call is complete, the recording can be referred to a supervisor for interpretation. While there is no guarantee that this will happen, the recording has a greater chance of being understood than a written document, since people are generally more careful to be understood verbally than to have legible handwriting.

11) Written approval will reduce telemarketing calls

- Illustrative quotes

⁵⁷ Cable & Wireless, Comments, p.5

⁵⁸ Information Technology Association of America, Comments, p.6

“...[T]he Commission should not adopt policies, such as sanctioning oral authorization of CPNI disclosure on outbound telemarketing calls, that could encourage an increase in telemarketing calls.”⁵⁹

- Discussion

This argument assumes two things. First, that carriers would engage in telemarketing specifically to generate CPNI approvals. Second, that carriers would not engage in telemarketing to encourage customers to sign and return their CPNI approval forms. Both of these assumptions are speculative at best. Clearly the system which provides the most effective means of obtaining a definitive answer, whether positive or negative will result in the fewest attempts to obtain customer approval. Indeed, Ameritech argues that carriers will call to follow up with customers to obtain approvals⁶⁰, and the written system - which will result in the fewest responses from customers - creates the greatest need to follow up.

- Effect of recorded third party verification

By providing for a well-documented oral approval by the customer, the recorded verification system allows carriers to bring the issue to closure quickly, reducing the need for telemarketing calls. In addition, the recording provides the verbatim record, so carriers do not need to recontact customers to get clarification, eliminating another potential source of telephone calls to customers (in fact, following the argument about illegible handwriting, a written system which provided for customer-specific limitations on approvals could result in many calls to customers to obtain clarification).

12) Written notification prevents difficulty of understanding in phone situation

- Illustrative quotes

“The topic [of CPNI rights] is likely to be too complex to convey during a brief telephone call to end user whose attention is focused on the purpose of the call.”⁶¹

“Customers must be given the chance to consider their options, and the pressure of telemarketing does not allow for careful thought.”⁶²

“It is easy to envision slick telemarketing holding a customer’s privacy rights hostage for some ‘opportunity of a lifetime’”.⁶³

- Discussion

A written process offers no understanding to illiterate, non-English speaking or non-reading customers. Furthermore, there is little demonstration in the record that CPNI rights notification or approval requires complicated explanations or deeply considered thought. Nowhere in the record do commenters criticize the depth of explanation provided in the CPNI approval forms used today (there are other criticisms, of course), the text of which could easily be adapted for oral notification and approval purposes. Furthermore, the survey data provided by the RBOCs suggest that few people have difficulty with the question and simply agree that their telephone company should have access to CPNI. Finally, the

⁵⁹ Competitive Policy Institute, Reply comments, p.1

⁶⁰ Ameritech, Comments, p.10

⁶¹ Excel, Comments, p.4

⁶² Computer Professionals for Social Responsibility, Comments, p.12

⁶³ Computer Professionals for Social Responsibility, Comments, p.12

customer can easily refuse to provide their approval if they are unsure, or revoke their approval if they change their mind.

- Effect of recorded third party verification
A recording system allows regulators, if they choose, to easily audit the conversations and listed to the approvals being given, noting the customer's tone of voice, hesitation, questions, etc. This would provide empirical evidence regarding whether customers felt pressured, unsure, confused or were otherwise uncomfortable providing approval. If such a review warranted it, the Commission could then modify its rules.
- 13) Written approval creates competitive parity
- Illustrative quotes
"The existence of a written document, signed by the customer...will create competitive parity."⁶⁴
"...to ensure a 'level playing field' for competition..."⁶⁵
 - Discussion
The desires of the commenters is to prevent ILECs and other established carriers from obtaining the information, thus eliminating a potential competitive advantage that these larger carriers would have. We will leave it to others to argue whether this section of the statute should be used to equalize competition. We note, however, that established carriers have many competitive advantages, including brand recognition, access to capital, large pools of working talent, etc. and CPNI data, while important, is a relatively small part of the competitive equation.
 - Effect of recorded third party verification
The recorded system offered here would be available to all carriers equally, and so provides parity in that sense. Since the system we propose requires carriers to obtain, rather than assume, approval, it eliminates the ILECs' ability to access customer CPNI where approval is not granted, resolving the concern that the customer has not voluntarily entered into a relationship with the ILEC.
- 14) Written approval ensures the right person in household approves
- Illustrative quotes
"Oral approval is especially problematic when more than one adult is in the household and they have different views about the privacy of CPNI."⁶⁶
"...whether an oral authorization was given by an individual with the authority to do so..."⁶⁷
 - Discussion
A written notification and approval process has the same problem, of course, since one party in the household or business may sign and return the form without the consent of the others or the authority to do so. Once the signed form is returned to the carrier, it is unrealistic to expect any further verification that the approval is unanimous or properly authorized.

⁶⁴ Frontier Corporation, Comments, p.7

⁶⁵ Computer Professionals for Social Responsibility, Comments, p.10

⁶⁶ Computer Professionals for Social Responsibility, Comments, p.12

⁶⁷ Information Technology Association of America, Comments, p.6

- Effect of recorded third party verification
If the Commission chose to do so, it could require that the script include language asking if the customer had the authority to provide the approval or it could restrict approvals to those from the person whose name is on the account. We would not recommend this for business accounts, since the contact name may not be current.
- 15) Written approval avoids competitive abuse
- Illustrative quotes
“It is critical that CPNI rules for ILECs be more stringent and be clear at the outset to prevent ILEC ability to use CPNI rules as a weapon against competition (e.g. to wage a “scare campaign” influencing customers to freeze their CPNI).”⁶⁸
“Second, additional safeguards are necessary to prevent local and interexchange service providers from securing a stronghold in a new market segment by virtue of their significant market penetration in a different market segment.”⁶⁹
“...[Requiring written authorization means] carriers...will not be able to leverage that information too easily into unfair competitive advantages that harm competition in other markets.”⁷⁰
 - Discussion
Much of this argument is the same as that for competitive parity, noted above. The objective of the commenters seems to be to deny the carrier CPNI information by requiring written approval, which the smaller carrier cannot access because of its smaller customer size. There is an additional element here, however, of abusing the customer - essentially badgering or frightening the customer into providing CPNI to the ILECs or denying it to competitors.
 - Effect of recorded third party verification
A recording process will act as a deterrent to any abusive behavior on the part of carriers, since the recordings will show evidence of the pressure on the customer. Carriers are highly unlikely to engage in questionable behavior if verbatim recordings of conversations showing such behavior might come to light. The service bureau approach provides special protection in this regard since the service bureau holds the recordings and prevents them from being erased or tampered with.

Issues Raised in Opposition to Written Approval Requirements

- 16) Written approval creates an unreasonable administrative burden⁷¹
- Illustrative quotes
“...[M]ore burdensome documentation [than carrier record notation] is not needed and would not be cost effective.”⁷²
“...[Written CPNI requirements would] establish costly and elaborate internal business procedures”⁷³

⁶⁸ Cable & Wireless, Comments, p.6

⁶⁹ Arch Communications Group, Comments, p.9-10

⁷⁰ Airtouch Communications, Comments, p.6

⁷¹ Teleport Communications Group, Comments, p.4

⁷² SBC Communications, Comments, p.12

⁷³ Allnet, Comments, p.4

“...competitive and economic burdens that mid-sized and small companies are ill-equipped to shoulder”⁷⁴

- Discussion

It is difficult to address this concern since no commenter provided either cost estimates or detailed descriptions of the procedures that would be required. Our analysis shows, however, that this burden is based entirely in the cost of the written data gathering process and that the administrative burden of managing the data is independent of the approval process used.

First, each carrier will necessarily have to maintain a notation in the customer record of the customer’s CPNI approval status. This is true regardless of whether the Commission adopts the assumed approval/negative opt-out proposals of the ILECs and AT&T or the more restrictive approaches of other commenters. This is the only way carriers can identify whether the customer approves or disapproves of CPNI usage.

Second, the procedures and organizational separations used in the handling of CPNI are independent of the means by which carriers are required to gather the CPNI approval. Otherwise, carriers will run roughshod over the express desires of the small minority of customers who choose to restrict CPNI usage.

Thus, regardless of whether the carrier is required to obtain written or oral approval or is allowed to assume approval until notified otherwise, the procedures for dealing with the information are the same regardless of how the information is obtained.

Few of the commenters claimed, however, that obtaining oral approval would be excessively burdensome. In fact, carriers have numerous opportunities to talk to their customers, including inbound customer service calls, outbound sales calls, outbound service calls, initial service ordering calls, and additional service ordering calls. As carriers enter new businesses, they will increasingly call existing customers regardless of whether they have access to the customer’s CPNI. The incremental cost of requesting CPNI approval in an call is very small, and, as noted by MCI and others at the beginning of these comments, the oral approval process is easily implemented.

- Effect of recorded third party verification

The recorded third party verification process envisioned here adds very little to the cost of the process. We expect that most carriers will be able to complete the recording for less than \$1.00 per transaction, and in many cases, for as little as \$.50 per transaction.

17) Written approval prevents carriers from using CPNI

- Illustrative quotes

“...[A] carrier’s ability to use CPNI would be inadvertently restricted through customer inaction...”⁷⁵

“...[Assumed consent] maximizes consumer benefits from the development of innovative new products and services...”⁷⁶

⁷⁴ Allnet, Comments, p.4-5

⁷⁵ AT&T, Comments, p.15

⁷⁶ AT&T, Comments, p.15

“...[Assumed consent] maximizes ...the availability of increased information about those services...”⁷⁷

“...[A]ffirmative consent, whether written or oral, is difficult to obtain for reasons unrelated to consumer privacy.”⁷⁸

“Customers may not respond even to a clearly worded notice [for written approval]”⁷⁹

“The carrier could not obtain [prior affirmative] customer approvals in sufficient numbers to warrant the expense of attempting to obtain such authorization.”⁸⁰

“Requirement of affirmative consent would effectively eliminate carriers’ ability to market new services to their customers.”⁸¹

- Discussion

Despite occasional references to oral processes, almost every commenter making this argument focused primarily on written approval as the barrier to obtaining customer approval. Since several carriers presented consumer research data showing that customers approve of CPNI usage by their carrier, it should be obvious that the vast majority of customers would approve and would provide approval.

Of course, the customers who chose not to provide approval have every right to do so. The smallest estimate we saw of customers likely to deny approval is approximately 17%, according to Cincinnati Bell⁸². While this is clearly a minority, it is a substantial portion of the population, and one Congress explicitly gave the right to deny CPNI usage by carriers.

The actual impact of CPNI usage restrictions would have different effects on one-stop shopping, and other benefits of CPNI usage, than many commenters suggest. Product development should not suffer at all from approval methods such as oral approval, which will yield a large, but incomplete, measure of approvals from customers. Product development depends on aggregate CPNI which is not the subject of this part of the statute. And customers will still be able to order as many services as they like from any carrier offering those services. The only impact on one-stop shopping is in the carrier’s ability to use the information to target particular customers for solicitation for new services and in the carrier’s ability to address customer questions whose answers may depend on CPNI. Even in these circumstances, the restrictions on CPNI usage do not apply on an inbound call where the customer provides permission for CPNI usage.

- Effect of recorded third party verification

The third party recording system should provide no barrier to consumer approval levels. VoiceLog has been offering its recording system in a number of consumer situations - including long distance PIC change verification - and believes there is little effect on consumer acceptance.

⁷⁷ AT&T, Comments, p.15

⁷⁸ GTE, Reply comments, p.2

⁷⁹ Pacific Telesis, Comments, p.9

⁸⁰ Pacific Telesis, Comments, p.9

⁸¹ Pacific Telesis, Comments, p.10

⁸² Cincinnati Bell, Comments, Appendix A, p.2

- 18) Written approval undermines one-stop shopping
- Illustrative quotes

[Affirmative approval] denies consumers the benefits of one-stop shopping⁸³
“FCC has stated that restrictive prior approval requirements can be expected to eliminate one-stop shopping benefits”⁸⁴
 - Discussion

This argument depends on the obtaining of consumer CPNI usage approvals. To the extent that the Commission provides an effective method for obtaining CPNI usage approvals, there should be no difficulty. In particular, an oral process, in which the customer can be asked for CPNI usage approval prior to the carrier representative addressing other service offerings would eliminate any barriers to one-stop shopping.

Of course, those customers who choose not to approve CPNI usage are effectively refusing certain one-stop shopping benefits and are granted that right in the statute.
 - Effect of recorded third party verification

The recorded third party verification system provides no impediments to obtaining a customer’s CPNI usage approval, then moving to a discussion with the customer regarding additional products and services.
- 19) Written approval means carriers cannot meet consumer expectation of carrier knowledge
- Illustrative quotes

“...soothe subscriber irritation at having to obey new Commission rules in order to service accounts with CPNI.”⁸⁵
 - Discussion

The only reason customers would be irritated would be if the carrier’s representative could not answer their questions or otherwise address their needs. With a process that permitted carriers to obtain the customer’s approval orally, then address the customer’s issues, this concern should be essentially eliminated, since the carrier can then address the customer’s issues.
 - Effect of recorded third party verification
 - The third party recording system provides no difficulty in permitting carriers to record the customer’s approval, then moving to a discussion of the customer’s needs.

⁸³ AT&T, Reply comments, p.10

⁸⁴ US West, letter, May 23, 1996, Attachment, p.11

⁸⁵ Allnet, Comments, p.4

ATTACHMENT 1
VOICELOG SALES LITERATURE

Here's how to get started...

You'll find little training is necessary--just follow these easy steps:

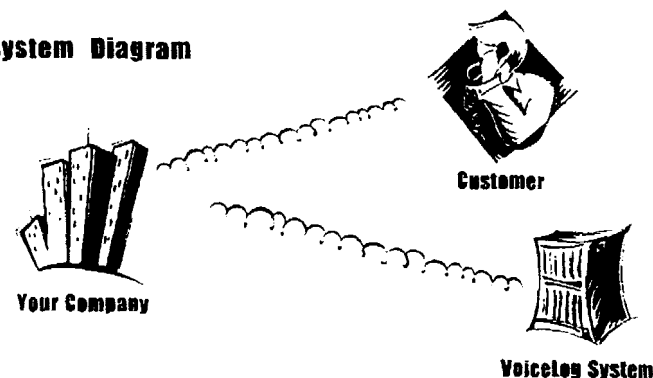
To record a call:

- 1** Set up a three-way call. Note: Depending on your telephone system you may depress the switchhook, or your office telephone system may have a "conference" button. Check with your telecommunications manager.
- 2** Dial your unique VoiceLog™ 800/888 *record* access number. This number is designated specifically for your business and/or project. The free demonstration number is 612-230-6287
- 3** When the VoiceLog system answers, it will play a brief introduction and state that the call will be recorded. After the introduction, VoiceLog will automatically begin recording your call.
- 4** Once you have recorded the necessary information, press the "#" button to stop the recording process.
- 5** After recording is completed, the VoiceLog system will automatically play a confirmation number. This confirmation number should be documented for your records in the event future call retrieval is required.
It's that easy!

To play back a call:

- 1** To replay an authorization for a customer or the customer's bank, begin with that party on the line.
- 2** Set up a conference call and dial your VoiceLog 800/888 *playback* access number. Free demonstration playback number is 612-230-6288.
- 3** The system will prompt you to enter your company's 5 digit security code. Demonstration authorization code is 12345. Then enter the unique confirmation number for the call you want to retrieve.
- 4** The system will play back the call. You may stop playing the call at any point by pressing "#".

VoiceLog System Diagram



Usage tips:

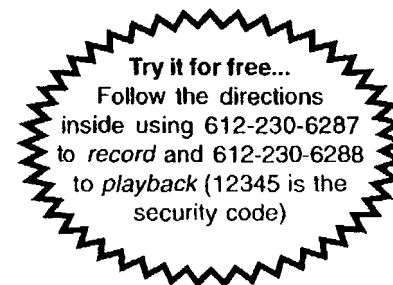
- Before you use the VoiceLog system, test it by setting up a three-way call and recording a test conversation. This is to ensure that both parties can be heard when you play back the call. The level of amplification may need to be altered on some conference calling systems.
- Set up the call scripting to keep the recorded portions of the call grouped together. Advanced planning will help you to control your usage since only one voice record can be created each time you call.
- Create a script that outlines *exactly* what you want record and follow it verbatim. If you are using the VoiceLog system for legal documentation, you will want to ensure that you've documented the correct information. This may include confirmation of the third party's name and address, basic terms of the agreement, date of transaction, and service/product pricing. If feasible, have your attorney review the script to ensure it meets your needs.
- If you need to verify that the necessary information has been recorded, press the "#" key, then press the "7" key. The recording will begin playing at the beginning and will allow you to add to the voice record.
- If more than one person is recording calls, implement a regular program of auditing. These "spot checks" will ensure that your company is accurately documenting the necessary information. In addition, this can be a valuable training tool.
- For quick call retrieval, set up a database or formal process to document all confirmation numbers.
- You may want to restrict access to your company's authorization code to ensure confidential information is protected.

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VoiceLog LLC
9509 Hanover South Trail
Charlotte, NC 28210
NC Office: 704.341.1356
VA Office: 703.356.1325
Fax: 704.543.1458

Instructions Guide



Try it for free...

Follow the directions
inside using 612-230-6287
to *record* and 612-230-6288
to *playback* (12345 is the
security code)

The Call Recording Solution ... ➤



VoiceLog™ Features

.....

- Verification of recorded transactions
- Complies with FTC Telemarketing Sales Rules
- Record any part of a telephone conversation
- Unlimited recording lengths
- Control recording via touch-tone telephone commands
- Voice record includes date and time (helpful in authenticating evidence)
- System-generated ID number for easy, instant retrieval
- Completely digital system for high quality voice recordings
- Daily back-ups of system
- Permanent storage available
- Records stored in a secured systems environment

Pricing Schedule:

Digital Voice Recording Service Featuring *Toll-Free Access*

One Time Set-up Fee: Setup charge of \$50 per account. Provides your company with a unique toll-free access number.

Monthly: Account fee and rate per minute (see chart below). Select the service plan based on your anticipated usage level.

	<i>Monthly Fee:</i>	<i>Rate/Minute*:</i>
Heavy User (1500+ minutes/month)	\$200	\$0.35
Regular User (250-1500 minutes/month)	\$50	\$0.45
Occasional User (40-250 minutes/month)	\$25	\$0.55
Infrequent User (Up to 40 minutes/month)	\$15	\$0.80

* Per minute pricing includes toll-free access and is billed for both recording and retrieval. Records are digitally stored (allowing real time retrieval) for 4 months and are archived for 3 years. Additional record storage time is available.

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**For more information on VoiceLog™, please
contact our nearest sales office:**

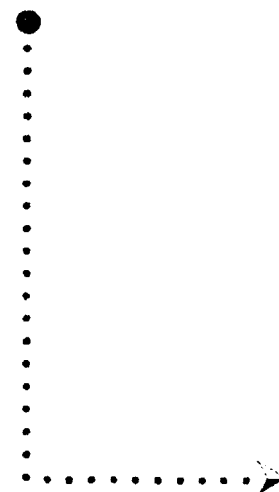


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The Call Recording Solution

Provides
compliance for new
FTC Telemarketing
Sales Rules

A Superior Solution for Documenting Financial Transactions *Over the Phone*



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VA Office: 703.356.1325
Fax: 704.543.1458

The Call Recording Solution

ATTACHMENT 2 TO VOICELOG LLC CPNI EX PARTE COMMENTS
BONA FIDE COPY OF ORIGINAL COMMENTS SENT TO FCC



VoiceLog LLC

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September 3, 1996

Bill Canton
Secretary of the Commission
FCC
1919 M Street, NW
Room 222
Washington, DC 20554

Dear Mr. Canton:

At the suggestion of Janice Myles and in response to the issues raised in the commission's NPRM 96-221, In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, we address the issues raised in Notification Requirements and Authorization Requirements.

Our comments are meant to balance privacy and competitive concerns, offering a method of obtaining customer consent that ensures that the customer's wishes are reflected in the consent and which is efficient enough to allow all carriers to use without undue burden.

We propose that properly authenticated audio recordings of carefully scripted requests for oral consent and the customers' responses to those requests are the best basis for determining the actual wishes of the customer. We further suggest that such recordings be made through an independent third party, and that the third party maintain those recordings to help ensure their authenticity. Although we believe that third-party recorded oral consents are the best method of obtaining consent from many customers, we propose that this method be provided as an alternative which carriers may use as a substitute for either written consent or, if the commission chooses, consent verified by a independent third party live operator.

One method for making such recordings involves the use of a recording service bureau. In using a recording service bureau, a carrier sets up a three-way call between the customer, the carrier and the recording system. The system plays an announcement that the conversation will be recorded and then begins recording, at which point, the carrier's telephone representative explains the customer's rights with regard to CPNI usage and asks for the customer's permission to use CPNI for that customer.

After the conversation between the customer and the carrier is completed, the recording system generates an identification number, which the carrier representative enters into the customer record, and gives the number to the customer. In addition to the identification number, each recording is date and time stamped. Recordings are stored in duplicate on electromagnetic hard disks and are archived on magnetic tape each night. Recorded conversations are available for instant retrieval for four months and then retrieval within 24 hours for the next 32 months.

There is a precedent for this approach in the case of primary interexchange carrier (PIC) changes. The commission has already approved the use of independent third parties as a means of documenting oral